



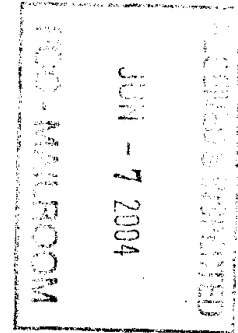
Federal Communications Commission  
Washington, D.C. 20554

648263  
Imaging Center

May 28, 2004

Dan J. Alpert, Esq.  
2120 N. 21<sup>st</sup> Road  
Arlington, Virginia 22201

Dear Mr. Alpert:



This is in response to the petition for rule making your filed on behalf of Argentum FM Society proposing the allotment of Channel 268C3 at Silver Cliff, Colorado, as the community's first local aural transmission service.. To accommodate the allotment, you also proposed the substitution of Channel 266C3 for vacant Channel 267C3 at Walsenburg, Colorado.

We have reviewed your proposal and find that it is unacceptable for consideration at this time. While the allotment of Channel 268C3 at Silver Cliff is fully spaced to the construction permit site (39-44-18 NL and 106-47-58 WL) for Station KTUN(FM), Channel 269C1, Eagle, Colorado, it is short-spaced to the licensed site (39-44-18 NL and 106-47-58 WL) for Channel 268C for that station. Therefore, the proposal is in violation of Section 73.207(b)(1) Commission's Rules. Although we recognize that there is a request in MM Docket No. 03-144 to downgrade Station KTUN(FM) from 268C to 269C1 at modified reference coordinates (39-45-15 NL and 106-54-13 WL), there has been no final disposition in that proceeding. See 18 FCC Rcd 12696 (2003); see also Public Notice, Report No. 2629, RM-10789 (September 16, 2003).

Therefore, for the reason stated above, we are returning your petition for rule making. If you wish, you may refile your petition, provided it meets all of the Commission's technical requirements.

Sincerely,

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Enclosures

Before the  
**Federal Communications Commission**  
Washington, DC

RECEIVED

SEP 10 2003

Federal Communications Commission  
Office of the Secretary

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
(Silver Cliff and Walsenburg, Colorado)

RM-

To: Assistant Chief, Audio Division  
Media Bureau

**PETITION FOR RULEMAKING**

Argentum FM Society ("Argentum"), by its attorney, hereby requests that the Commission  
amend the Table of Allotments as follows:

<u>Community</u>	<u>Current</u>	<u>Proposed</u>
Silver Cliff, CO	--	268C3
Walsenburg, CO	267C3	266C3

In support thereof, the following is stated:

Attached hereto is a Technical Statement which demonstrates that Channel 268C3 can be allotted at 38° 04' 37" N, 105° 33' 15" W, which will prevent any shortspacing from occurring with any currently authorized or proposed facility other than a vacant allotment for Channel 267C3 at Walsenburg, Colorado. That short-spacing can be eliminated by re-allotting Channel 267C3 to Channel 266C3, which can be accomplished in full accord with all authorized or proposed facilities, and can be done using the same reference point as is currently assigned to Channel 267C3/Walsenburg. Although a small amount of Silver Cliff will be shadowed from the proposed allotment site due to lack of total line-of-sight over the entire community, after careful analysis, it has

been determined that the "shadowed area" encompasses only an estimated 7 persons, and in any event, there is no indication that the shadowing would prevent Silver Cliff from nevertheless being served with the requisite 70 dBu city-grade service throughout the entire proposed community of license.<sup>1</sup>

Adoption of this proposal will be in the public interest. Silver Cliff is an existing town, listed in the 2000 United States Census with a population of 512 persons. As demonstrated in the Technical Statement, approval of this proposal will allow Argentum to provide new first service to the public in Silver Cliff, Colorado. Argentum will apply for the allotment at such time as this proposal is adopted.

Accordingly, Argentum respectfully requests that this Petition be adopted, that the Commission amend the FM Table of Allotments to specify the new channel at Silver Cliff, Colorado, and that the Commission request comment on the proposal contained herein.

Respectfully submitted,

**ARGENTUM FM SOCIETY**

By: 

Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert*  
2120 N. 21<sup>st</sup> Rd.  
Arlington, VA 22201

703-243-8690

*September 2, 2003*

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<sup>1</sup> *R&L Broadcasters*, 7 FCC Rcd 5551, ¶ 15 (1992); *Madison, IN*, 14 FCC Rcd 9518 ¶ 5 (MMB 1999).

## **Technical Narrative**

### **Introduction**

This petition seeks to have a new service added to Silver Cliff, Colorado, a US Census Town with 2000 population of 512 persons. The resulting allotment will provide an additional interference-free service to 5,983 persons in an area of 4,778 square kilometers. This allotment of 268C3 can be granted in compliance with 47 CFR §73.207<sup>1</sup> and §73.315<sup>2</sup> at 38-4-37 NL 105-33-15 WL provided one related change to the Table of Allotments is also made. This change is explained below

### **Terrain at Silver Cliff**

The US Census boundaries of Silver Cliff include several hills of significant size including Rattlesnake Hill, Bunker Hill, Kankakee Hill and Excelsior Ridge. Because of the presence of these and nearby hills<sup>3</sup> there is probably no site which enjoys unobstructed line of sight to all locations within Silver Cliff.

Although the reference site is elevated above most of Silver Cliff, the site is surrounded on the northwest, west, southwest and south by much higher mountainous terrain. These terrain features have no impact on line of sight towards Silver Cliff but do have some effect on the Height Above Average Terrain calculation. Assuming a 100-meter-tall tower at the proposed site, the predicted Height Above Average Terrain is -204 meters. Nevertheless, the proposed allotment was analyzed using this hypothetical tower and a 3 second terrain database. Of 40.56 square kilometers within Silver Cliff, all but 2.734 square kilometers of Silver Cliff enjoys line of sight<sup>4</sup> or approximately 7% of the area. Approximately 7 persons live within the shadowed area, just over 1% of the total Silver Cliff population.

All areas of the community are well within the predicted 70 dBu F[50,50] from the 100-meter-tall tower, even considering that it is very short from the standpoint of Height Above Average Terrain. The F[50,50] 70 dBu contour extends some 18 KM further than the most distant point within Silver Cliff.

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<sup>1</sup> See attached channel study for NEW 268C3, Silver Cliff Colorado

<sup>2</sup> Please refer to the map entitled "Hypothetical Coverage of Silver Cliff, Colorado"

<sup>3</sup> Please refer to the map entitled "Topographic Detail of Silver Cliff, Colorado."

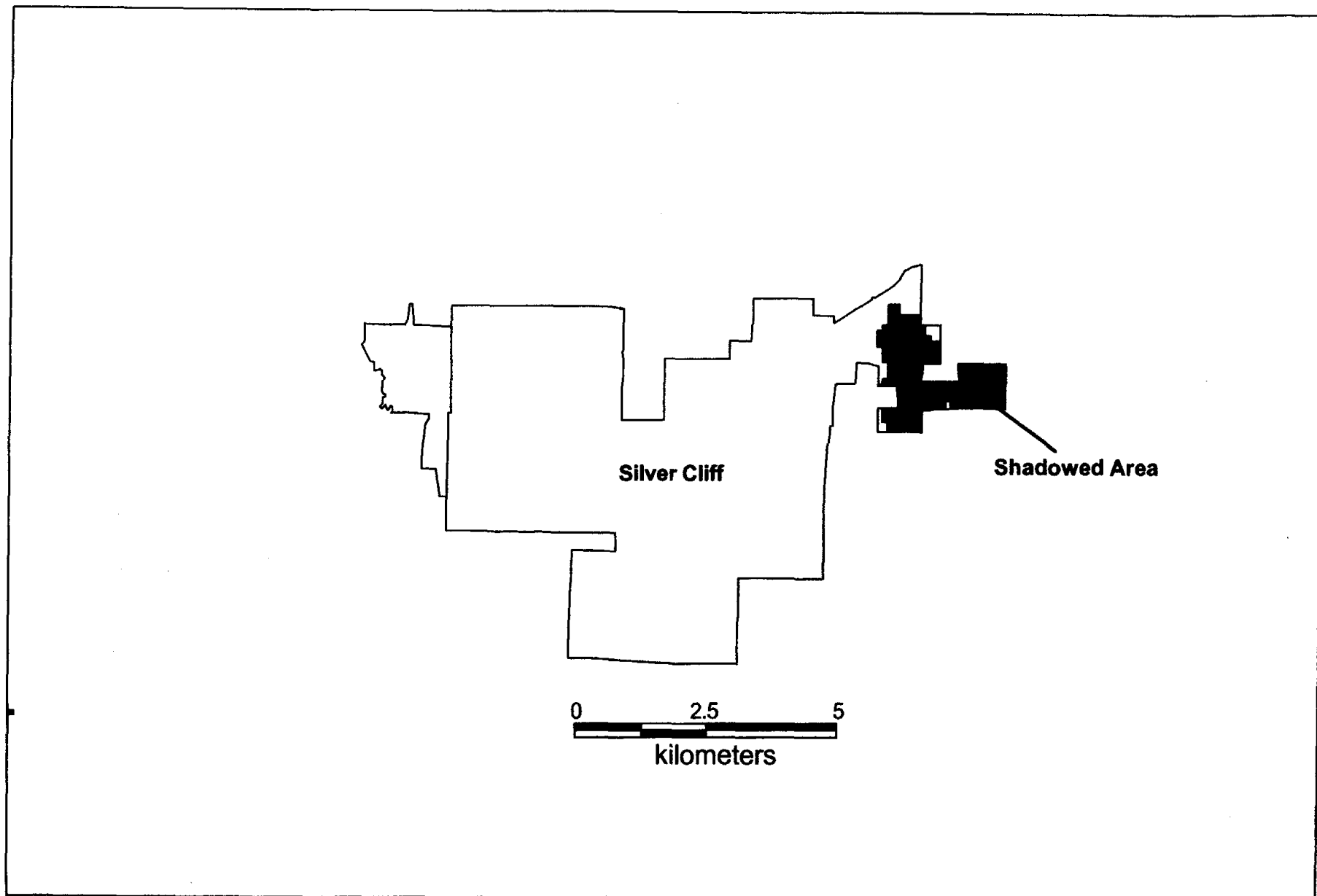
<sup>4</sup> Please refer to the map entitled "Line of Sight to Silver Cliff."

### **Walsenburg, Colorado**

The proposed allotment of 268C3 at Silver Cliff is impermissibly short spaced to vacant allotment 267C3 at Walsenburg Colorado. 266C3 can be substituted at Walsenburg with no change in the reference site<sup>5</sup>.

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<sup>5</sup> See attached channel study for ALLOC 266C3, Walsenburg, Colorado



**Line of Sight to Silver Cliff, Colorado**

09-02-2003

FM Study for: NEW FCC Database Date: 8/8/2003 38-04-37  
Location: SILVER CLIFF, CO Channel Class: C3 105-33-15  
[\*] by HAAT indicates calculated as missing in database.  
Call City, State Chan Class Freq kW Latitude Dist. Required  
Status Proponent File Number HAAT Longitude Azm. Clear (km)

>>>>>>> Study For Channel 268 101.5 MHz <<<<<<<<

ALLOCR EAGLE, CO 268 C 101.5 39-44-18 213.7 237  
DEL RM-vm128 0 106-47-58 330.0 -23.3 SHORT

Note: See KTUN License record below

ALLOCR EAGLE, CO 268 C 101.5 39-44-18 213.7 237  
DEL RM-KS138 0 106-47-58 330.0 -23.3 SHORT

Note: See KTUN license record below

KTUN EAGLE, CO 268 C 101.5 36.0 39-44-18 213.7 237  
LIC Fac. No. 44012 BLH-19840427DO 674 106-47-58 330.0 -23.3 SHORT

Note: Changed to 269C1 by granted indexed application BPH-20020813ABK.

ALLOC WALSENBURG, CO 267 C3 101.3 37-37-27 84.7 99  
VAC Fac. No. 122069 Dockt-1999-109 0 104-46-47 126.2 -14.3 SHORT

Note: Propose to change channel to 266C3 which requires only 43 KM separation and is thus CLEAR.

KKCSFM COLORADO SPRINGS, CO 270 C 101.9 72.0 38-44-43 95.73 96  
LIC Fac. No. 70822 BLH-19960111KJ 695 104-51-41 39.0 -0.27 CLOSE

ALLOC FORT MORGAN, CO 268 C 101.5 39-51-39 246.4 237  
RSV Fac. No. 38629 - 0 103-51-44 36.0 +9.4 CLOSE

ALLOC FORT MORGAN, CO 268 C 101.5 39-51-39 246.4 237  
RSV Fac. No. 38629 - 0 103-51-44 36.0 +9.4 CLOSE

ALLOCR STRASBURG, CO 268 C 101.5 39-55-27 246.5 237  
ADD RM-KS138 0 103-58-25 33.2 +9.5 CLOSE

KBRUFM FORT MORGAN, CO 268 C 101.5 92.0 39-55-22 246.5 237 73.215  
APP Fac. No. 38629 BPH-20020813ABJ 621 103-58-18 33.3 +9.5 CLOSE

KIQX DURANGO, CO 267 C 101.3 30.0 37-21-46 212.8 176  
CP Fac. No. 22174 BPH-19990219IG 614 107-47-37 248.8 +36.8 CLEAR





09-02-2003

FM Study for: ALLOC  
Location: WALSENBURG, CO

FCC Database Date: 8/8/2003 37-37-27  
Channel Class: C3 104-46-47

[\*] by HAAT indicates calculated as missing in database.

Call City, State Chan Class Freq kW Latitude Dist. Required  
Status Proponent File Number HAAT Longitude Azm. Clear (km)

>>>>>>> Study For Channel 266 101.1 mHz <<<<<<<<

ALLOC	WALSENBURG, CO	267 C3	101.3		37-37-27	0.0	99	
VAC	Fac. No. 122069	Dockt-1999-109	0		104-46-47	0.0	-99.0	SHORT
KOSI	DENVER, CO	266 C	101.1	74.0+	39-43-45	237.00	237	
LIC	Fac. No. 67844	BLH-20020118AAJ	495		105-14-06	350.5	+0.00	CLOSE
KGFT	PUEBLO, CO	264 C	100.7	77.0+	38-44-43	124.6	96	73.215
LIC	Fac. No. 20579	BMLH-20010216AAB	676		104-51-39	356.8	+28.6	CLEAR